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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 KARL W. SCHENKER,

9 *Plaintiff,*

10 vs.

11 12 CHRISTIAN ROWLEY, *et al.*

13 *Defendants.*

3:12-cv-00174-LRH-VPC

14 ORDER

15 This prisoner civil rights action by a Nevada state inmate comes before the Court on
16 plaintiff's motion (#43) for a temporary restraining order.

17 Plaintiff seeks a temporary restraining order directed to "N. Young," the alleged law
18 library supervisor at Ely State Prison ("Ely"), who is not a party in this action. Plaintiff seeks
19 an order restraining Young from denying plaintiff access to legal supplies when allegedly
20 indigent and from retaliating against him in his grievances against Young. The allegations in
21 the motion concern, *inter alia*, a denial of a May 22, 2013, request for a replacement ink pen.

22 The motion will be denied. As noted, Young is not a party in this action. The
23 circumstances alleged in the motion from 2013 are not alleged in the pleadings, which pertain
24 instead to events in 2011. It further would appear highly doubtful that petitioner has
25 exhausted his administrative grievances regarding the alleged 2013 incidents. While the
26 Court may not *sua sponte* raise lack of administrative exhaustion as a defense to claims in
27 a complaint, that does mean that the Court must ignore a probable lack of exhaustion in
28 pragmatically considering whether petitioner presents an overall probability of success on a

1 request for injunctive relief. Moreover, in order to establish an actual right to relief on a claim
2 of denial of access to the courts, plaintiff must demonstrate not merely that sundry
3 department regulations *arguendo* are not being followed. He instead must demonstrate an
4 actual injury to his ability to access the courts, in an actual adverse effect on a pending court
5 action. Whatever difficulty that plaintiff is experiencing obtaining a replacement pen, etc., he
6 clearly is able to access the Court successfully. Further, there neither are, nor should be, any
7 extensive proceedings going on in this particular matter at the moment. Following a stay, the
8 matter is pending for a settlement conference, which was ordered at plaintiff's request.

9 This action is not a clearinghouse for plaintiff's ongoing disputes with correctional
10 officers and officials as they occur over time. Plaintiff clearly may not obtain temporary
11 injunctive relief on claims not presented by the pleadings against a person who is not a party
12 in this action. Nor has plaintiff remotely come close to even articulating a valid constitutional
13 basis under the First Amendment for the emergency injunctive relief requested. To the extent
14 that he seeks relief based upon a right to be free of retaliation over and above a right of
15 access to the courts, plaintiff will have to exhaust his administrative grievances and pursue
16 such a retaliation claim in properly-presented pleadings.

17 The Court will formally reinstate the stay. Plaintiff is one more frivolous motion away
18 from – substantial – sanctions being imposed in this matter. This is the final warning that
19 plaintiff will receive before sanctions proceedings are initiated. See #42, at 2; #31, at 7-8
20 (prior warnings).

21 IT THEREFORE IS ORDERED that plaintiff's motion (#43) for a temporary restraining
22 order is DENIED and that this matter is STAYED pending further express order of the Court
23 following the scheduled settlement conference.

24 DATED this 19th day of August, 2013.



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27 LARRY R. HICKS
28 UNITED STATES DISTRICT JUDGE